IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Patent Application of

NATHAN et al

Serial No. 09/583,863

Filed: June 1, 2000

For: DOWNLOADING FILE RECEPTION PROCESS

Atty. Ref.: JSP-871-80

TC/A.U.: 2424

Examiner: SHANG, ANNAN Q

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(January 10, 2010 = Sunday)
January 11, 2010 (= Monday)

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

Appellant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the Examiner.

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(I)   REAL PARTY IN INTEREST

The real party in interest is TouchTunes Music Corporation, a corporation of the country of the United States of America.

(II)   RELATED APPEALS AND INTERFERENCES

The appellant, the undersigned, and the assignee are not aware of any related appeals, interferences, or judicial proceedings (past or present), which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

(III) STATUS OF CLAIMS

Claims 1 and 4-7 are pending and have been rejected. Claims 2-3 previously were cancelled. No claims have been substantively allowed. The rejection of claims 1 and 4-7 is being appealed.

(IV) STATUS OF AMENDMENTS

No amendments have been filed since the date of the Final Rejection.

(V) SUMMARY OF CLAIMED SUBJECT MATTER

A listing of each independent claim, each dependent claim argued separately and each claim having means plus function language is provided below including exemplary reference(s) to page and line number(s) of the specification.

Claim 1. A method for receiving files sent by a central server to an audiovisual data reproduction system managed by an operating system and linked to the server using a data transfer link, the method comprising: [e.g., Fig. 1 flowchart; p. 2, line 26 to p. 3, line 5]

- initializing a link between the central server and an audiovisual data reproduction system [e.g., step 10 in Fig. 1; p. 5, lines 23-27; p. 10, lines 14-16],

- selecting an available storage area of a specified minimum size [e.g., step 11 in Fig. 1; p. 5, line 27 to p. 6, line 3],

- opening a reception file on a first permanent storage means of said audiovisual data reproduction system, corresponding to the available storage area selected [e.g., step 11 in Fig. 1; p. 5, line 27 to p. 6, line 3; p. 10, lines 17-21],

- receiving each packet of said file sent by the central server and directly writing each said packet sent by the central server to said reception file [e.g., steps 13-14, p. 6, lines 6-19], each file having information representative of a type of data associated with the file [e.g., p. 6, lines 25-31; p. 10, lines 23-25],

- for each file received, searching for a reception function to be associated with each received file based at least in part on the information representative of the type

of data associated with the file [e.g., step 20 in Fig. 1; p. 6, line 19 to p. 7, line 2; p. 10, lines 22-25], and

- processing each received file by the corresponding reception function [e.g., step 22, and either step 23 or 24 in Fig. 1; Fig. 2 or Fig 3 flowchart; p. 7, lines 2-12; p. 10, lines 26-29], the processing comprising copying the received file to a second storage means to update a database of the audiovisual reproduction system according to the data included in the received file [e.g., step 22, and either step 23 or 24 in Fig. 1; Fig. 2 or Fig 3 flowchart; p. 7, lines 2-12; p. 10, lines 26-29],

wherein the minimum size corresponds to a size of the file sent by the central server [e.g., step 11 in Fig. 1; p. 5, line 27 to p. 6, line 3; p. 10, line 30 to p. 11, line 2].

Claim 4. The method of claim 1, further comprising performing said searching when the last data packet of the file is stored in the second storage means [e.g., steps 14-15 and 20-21 in Fig. 1; p. 6, lines 7-24; p. 11, lines 7-9].

Claim 5. The method of claim 1, wherein the information representative of the type of data comprises the file extension and/or the name of the file received [e.g., p. 11, lines 10-12].

Claim 7. The method of claim 1, further comprising when said searching does match a received file to a reception function, storing the received file in the first storage means [e.g., p. 7, lines 9-12].

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(VI) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1 and 4-7 stand rejected under 35 U.S.C. § 102(b) as allegedly being

anticipated by Nathan et al. (WO 96/12257).

(VII) ARGUMENT

Claims 1 and 4-7 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Nathan et al. (WO 96/12257). It is noted that Nathan is the first-named inventor of the instant application, and that both Nathan and the current application are co-owned and commonly assigned. In any event, the outstanding § 102 rejection is erroneous and should be reversed for at least the following reasons.

Claim 1 recites, *inter alia*, "receiving each packet of said file sent by the central server and directly writing each said packet sent by the central server to said reception file, each file having information representative of a type of data associated with the file, [and] for each file received, searching for a reception function to be associated with each received file based at least in part on the information representative of the type of data associated with the file." These features of claim 1 are not identically disclosed in Nathan in as much detail as specifically recited in claim 1. Thus, Nathan does not anticipate claim 1 or its dependents.

Certain exemplary embodiments of the disclosed invention indicate that a "specific reception function" is searched for and located by "specified information representative of the type of data contained in the file." This feature advantageously allows processing of each file or each type of file differently, depending on the type of data contained in the file. Indeed, as page 6, lines 27-28 of the original specification explains, "each reception function is specific, either to a specific file or to a file type." Thus, certain exemplary embodiments take into account the very real fact that music files, album art files, system patch files, etc., may need to be processed differently from

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one another. As such, the specification makes clear that *there is one specific receipt function for each file or each type of file in certain exemplary embodiments* of the disclosed invention. And as claim 1 makes clear, each reception file includes "information representative of a type of data associated with the file" and a reception function associated with each received file is searched for and used "based at least in part on the information representative of the type of data associated with the file."

In marked contrast, *in Nathan, there is only one database management system for all files and all types of files*. Thus, Nathan's database management system is essentially generic to all types of reception files. At best, Nathan's singular database management system corresponds to a single reception function that is searched for and used irrespective of any information representative of the type of data associated with the file. But providing a single, generic reception function that processes all types of files as in Nathan is not identical to claim 1's plural, specific reception functions that are tailored to respective individual file types. This basic difference is perhaps most simply explained as the difference between (1) a one-to-many function-to-file type mapping, and (2) a one-to-one function-to-file type mapping. Simply stated, because Nathan's one-to-many mapping is not equivalent to claim 1's one-to-one mapping, Nathan cannot be an anticipatory reference.

It is perhaps not surprising that Nathan fails to identically disclose or inherently require the kind of one-to-one mapping described above, as Nathan fails to expressly disclose or inherently require the preliminary step of providing each reception file with "information representative of a type of data associated with the file" so that it then

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becomes possible to search for and use an appropriate reception <u>function</u> associated with each received file. Nathan describes its communication protocol at page 22, line 36 to page 23, line 33. During the transmission of blocks of data from the server to the jukebox, Nathan makes clear that these blocks contain information within fields that identify the file that is being downloaded. But this indication, as best Applicant can discern from the Final Office Action's excerptions and out-of-context quotations, is nothing more than that which is required whenever any file is downloaded using a packet-switched network protocol. That is, whenever any file is being downloaded, the file system must be able to associate a given packet with a given file. This wholly conventional association between a particular packet and a particular file, however, does not mean that Nathan discloses, or inherently requires, that the file itself contains "specified information representative of the type of data contained in the file" so that it then becomes possible to search for and use an appropriate reception <u>function</u> associated with each received file, as called for by claim 1. Indeed, providing a filename or file identifier so that a file can be stored is completely different than providing an indication of a file type so that a particular function can be executed after the file is stored.

Moreover, the Final Office Action's French quotation is similarly unsurprising and insufficient to constitute an express or inherent disclosure of the above-identified features of claim 1. More particularly, the quotation ("mises a jour des base de donnees ou de version de chanson souhaitees") merely means that Nathan "updates the database or version of your desired song." But this is by no means equivalent to providing each reception file with "information representative of a type of data associated with the file"

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so that it then becomes possible to search for and use a reception function associated with each received file, as called for in claim 1. Because Nathan does not disclose these features, it cannot anticipate claim 1 or its dependents.

In sum, Applicant respectfully submits that Nathan fails to identically disclose or inherently require "receiving each packet of said file sent by the central server and directly writing each said packet sent by the central server to *said reception file*, each file *having information representative of a type of data associated with the file*, [and] for each file received, *searching for a reception function to be associated with each received file based at least in part on the information representative of the type of data associated with the file*." Accordingly, Applicant respectfully requests that this § 102 rejection be reversed.

The rejection of the dependent claims are flawed for yet further reasons. For instance, Applicant respectfully submits that the Final Office Action errs in rejecting claims 4-5 and 7 for at least the additional reasons provided below.

It is noted that the features recited in claim 4 pertain to when the searching step of claim 1 is performed. The Final Office Action references Nathan's disclosure of determining whether all of the packets of a file have been downloaded in attempting to find these further features of claim 4. However, Nathan's determination as to whether a file has been fully downloaded does not relate to the time when a corresponding search is to be performed. Thus, the rejection of claim 4 is flawed for this further reason.

Claim 5 specifies that the information representative of the type of data comprises the file extension and/or the name of the file received. When read together with claim 1,

it becomes clear that this information is related to the file. However, Fig. 6 of Nathan and the corresponding description at page 21, lines 4-17 refer to the contents of Nathan's database -- not the contents of a file being downloaded. Although there likely will be some overlap between the information from the filed received by Nathan and the information stored in Nathan's database, Applicant respectfully submits that reference to the contents of the database is insufficient to establish what exactly is provided in a file that may be used to update the database. Thus, the rejection of claim 5 is flawed for this further reason.

Claim 7 provides a substantive limitation in that when said searching does match a received file to a reception function, the received file is stored in the first storage means. The Final Office Action merely refers to the rejection of claim 1. As shown above, however, the rejection of claim 1 is flawed. Moreover, even if the rejection of claim 1 were proper (which it most certainly is not), there is no explanation regarding what happens when Nathan's single database management system encounters a file that it cannot handle. Applicant has been provided with no guidance regarding how Nathan's database management system allegedly discloses the contingent execution contemplated in claim 7. As such, Applicant respectfully submits that the Final Office Action has not made out a prima facie case of anticipation with respect to claim 7.

Applicant respectfully submits that the rejection of claims 4-5 and 7 should be reversed for at least these additional reasons.
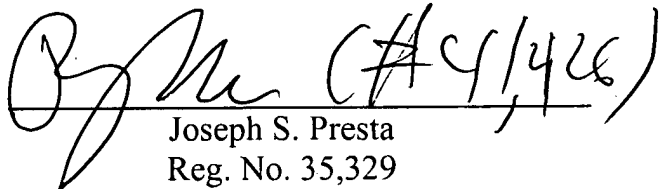
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CONCLUSION

In conclusion it is believed that the application is in clear condition for allowance;

therefore, early reversal of the Final Rejection and passage of the subject application to

issue are earnestly solicited.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: Joseph S. Presta
Reg. No. 35,329

JSP:jr
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100

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(VIII)   CLAIMS APPENDIX

1. A method for receiving files sent by a central server to an audiovisual data reproduction system managed by an operating system and linked to the server using a data transfer link, the method comprising:

- initializing a link between the central server and an audiovisual data reproduction system,

- selecting an available storage area of a specified minimum size,

- opening a reception file on a first permanent storage means of said audiovisual data reproduction system, corresponding to the available storage area selected,

- receiving each packet of said file sent by the central server and directly writing each said packet sent by the central server to said reception file, each file having information representative of a type of data associated with the file,

- for each file received, searching for a reception function to be associated with each received file based at least in part on the information representative of the type of data associated with the file, and

- processing each received file by the corresponding reception function, the processing comprising copying the received file to a second storage means to update a database of the audiovisual reproduction system according to the data included in the received file,

wherein the minimum size corresponds to a size of the file sent by the central server.

4. The method of claim 1, further comprising performing said searching when the last data packet of the file is stored in the second storage means.

5. The method of claim 1, wherein the information representative of the type of data comprises the file extension and/or the name of the file received.

6. The method of claim 1, wherein when the information representative of the type of data represents a song file, the database update step comprises at least one of the following steps:

- associating the received song file with a graphical file stored in the audiovisual reproduction system,

- checking the compatibility of the version of the song file with a version of an operating system of the audiovisual data reproduction system,

- updating a file stored on the audiovisual data reproduction system that identifies all songs stored on the audiovisual data reproduction system,

- updating a statistics table in the database making it possible to determine a selection frequency of the song corresponding to the file stored in memory,

- updating a purchase table containing the number and name of all the songs purchased for the audiovisual data reproduction system, and

- updating a counter of songs that can be selected to check that the number of songs that can be selected is not greater than a specified threshold

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7. The method of claim 1, further comprising when said searching does match a received file to a reception function, storing the received file in the first storage means.

(IX)   EVIDENCE APPENDIX

None.

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(X)   <u>**RELATED PROCEEDINGS APPENDIX**</u>

None.